



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3645/P2

PJK&MES:med:jf

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P2
RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WANTED
Tues:

D-NOTE

regenerate

1 AN ACT *to amend* 704.03 (1), 704.07 (1), 704.27, 704.29 (title) and 704.44 (intro.);
2 and *to create* 66.0628 (4), 66.1010, 704.02, 704.04, 704.07 (2) (bc), 704.07 (2)
3 (bm), 704.07 (3) (bm), 704.08, 704.17 (2) (d), 704.28 and 704.29 (5) of the
4 statutes; **relating to:** miscellaneous landlord-tenant provisions, *and*
5 regulation of fees that a local government may impose on residential dwelling
6 units, and granting rule-making authority

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 66.0628 (4) of the statutes is created to read:
8 66.0628 (4) A fee that is imposed by a political subdivision on residential
9 dwelling units shall be uniform within the political subdivision without regard to

Insert 1-7

whether a particular dwelling unit is owner-occupied, a rental unit, a single-family unit, or part of a multi-family unit.

SECTION 2. 66.1010 of the statutes is created to read:

66.1010 Moratorium on evictions. (1) In this section, "political subdivision" has the meaning given in s. 66.1011 (1m) (e).

(2) A political subdivision may not enact or enforce an ordinance that imposes a moratorium on a landlord from pursuing an eviction action under ch. 799 against a tenant of the landlord's residential or commercial property.

(3) If a political subdivision has in effect on the effective date of this subsection [LRB inserts date], an ordinance that is inconsistent with sub. (2), the ordinance does not apply and may not be enforced.

SECTION 3. 704.02 of the statutes is created to read:

704.02 Severability of rental agreement provisions. (1) The provisions of a rental agreement are severable. If any provision of a rental agreement is rendered void or unenforceable by reason of any statute, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid provision.

(2) This section applies to rental agreements in effect on or after the effective date of this subsection [LRB inserts date].

SECTION 4. 704.03 (1) of the statutes is amended to read:

704.03 (1) ORIGINAL AGREEMENT. ~~A~~ Notwithstanding s. 704.02, a lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease, and a

1 reasonably definite description of the premises, or unless a writing signed by the
2 landlord and the tenant sets forth the amount of rent or other consideration, the
3 duration of the lease, and a reasonably definite description of the premises and the
4 commencement date is established by entry of the tenant into possession under the
5 writing. Sections 704.05 and 704.07 govern as to matters within the scope of such
6 sections and not provided for in such written lease or contract.

7 **SECTION 5.** 704.04 of the statutes is created to read:

8 **704.04 Credit report fees. (1) DEFINITIONS.** In this section:

9 (a) "Consumer report" has the meaning given in s. 100.54 (1) (b).

10 (b) "Consumer reporting agency" has the meaning given in s. 100.54 (1) (c).

11 **(2) FEE.** (a) Except as provided in par. (b), a landlord may require a prospective
12 residential tenant to pay the landlord's actual cost, up to \$40, to obtain a consumer
13 report on the prospective tenant. The landlord shall notify the prospective tenant
14 of the charge before requesting the consumer report and shall provide the
15 prospective tenant with a copy of the consumer report.

16 (b) A landlord may not require a prospective tenant to pay for a consumer report
17 under par. (a) if, before the landlord requests a consumer report, the prospective
18 tenant provides the landlord with a consumer report on the prospective tenant that
19 is less than 30 days old from a consumer reporting agency.

20 **SECTION 6.** 704.07 (1) of the statutes is amended to read:

21 **704.07 (1) APPLICATION OF SECTION.** This section applies to any nonresidential
22 tenancy if there is no contrary provision in writing signed by both parties and to all
23 residential tenancies. An agreement to waive the requirements of this section in a
24 residential tenancy, including an agreement in a rental agreement, is void. Nothing

Insert 3-19

in this section is intended to affect rights and duties arising under other provisions of the statutes.

SECTION 7. 704.07 (2) (bc) of the statutes is created to read:

704.07 (2) (bc) A landlord shall respond as expeditiously as possible to any request from a tenant for a repair or other maintenance to the premises.

SECTION 8. 704.07 (2) (bm) of the statutes is created to read:

704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any building code or housing code violation to which all of the following apply:

1. The landlord has received notice of the violation from a local housing code enforcement agency.

2. The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises.

3. The violation has not been corrected.

4. The date by which the violation must be corrected has passed.

SECTION 9. 704.07 (3) (bm) of the statutes is created to read:

704.07 (3) (bm) If the premises is in need of any repair or other maintenance, before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency, a tenant shall first notify the landlord and allow the landlord adequate time to investigate and rectify the problem.

SECTION 10. 704.08 of the statutes is created to read:

704.08 Information disclosure sheet. (1) PROVIDE TO NEW TENANTS. A landlord shall provide to a residential tenant when the tenant enters into a new rental agreement a standardized information disclosure sheet that contains the

in writing

check-in

check-in

- 1 information required under sub. (2). The landlord is not required to provide the ^{an itemized description of the condition of the premises at the time of check-in} information ^{check-in} ~~disclosure~~ sheet to a tenant upon renewal of a rental agreement.

3 (2) INFORMATION SPECIFIED BY RULE. The department of agriculture, trade and
4 consumer protection shall specify by rule the information that must be disclosed on
5 the sheet under sub. (1). Notwithstanding s. 15.01 (3), any rule promulgated under
6 this subsection must be approved first by the rental information disclosure
7 committee.

****NOTE: Can you provide any more information about the type of information that must be included on the sheet? I think DATCP would need more guidance in order to promulgate a rule.

8 SECTION 11. 704.17 (2) (d) of the statutes is created to read:

9 704.17 (2) (d) This subsection does not apply to week-to-week or
10 month-to-month tenants.

11 SECTION 12. 704.27 of the statutes is amended to read:

12 **704.27 Damages for failure of tenant to vacate at end of lease or after**
13 **notice.** If a tenant remains in possession without consent of the tenant's landlord
14 after expiration of a lease or termination of a tenancy by notice given by either the
15 landlord or the tenant, or after termination by valid agreement of the parties, the
16 landlord ~~may~~ shall, at the landlord's discretion, recover from the tenant damages
17 suffered by the landlord because of the failure of the tenant to vacate within the time
18 required. In absence of proof of greater damages, the landlord ~~may~~ shall recover as
19 minimum damages twice the rental value apportioned on a daily basis for the time
20 the tenant remains in possession. As used in this section, rental value means the
21 amount for which the premises might reasonably have been rented, but not less than
22 the amount actually paid or payable by the tenant for the prior rental period, and

Insert 5-8

1 includes the money equivalent of any obligations undertaken by the tenant as part
2 of the rental agreement, such as payment of taxes, insurance and repairs.

3 **SECTION 13.** 704.28 of the statutes is created to read:

4 **704.28 Withholding from security deposits.** When a landlord returns a
5 security deposit to a tenant after the tenant vacates the premises, the landlord may
6 withhold from the full amount of the security deposit only amounts reasonably
7 necessary to pay for any of the following:

8 (1) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

9 (2) Past due bills for which the tenant is legally responsible and for the
10 nonpayment of which a lien may be placed on the rental property, including water
11 and sewer and electrical bills.

****NOTE: Would a landlord necessarily know what bills could result in a lien on the
property?

12 (3) Cleaning of the premises to return the premises to the same level of
13 cleanliness that existed at the beginning of the tenancy.

14 (4) If provided for in the rental agreement, replacement or repair of the
15 landlord's personal property, including keys and furniture, excluding normal wear
16 and tear.

****NOTE: It would be difficult to place a value on "normal wear and tear" for
purposes of subtracting it from the cost of, for example, a new couch. Or do you mean that
the tenant wouldn't be responsible for any of the cost of a new couch if a new one was
needed but the tenant only added normal wear and tear to the old one?

17 **SECTION 14.** 704.29 (title) of the statutes is amended to read:

18 **704.29 (title) Recovery of rent and damages by landlord; mitigation;**
19 **return of security deposit.**

20 **SECTION 15.** 704.29 (5) of the statutes is created to read:

1 704.29 (5) RETURN OF SECURITY DEPOSIT. If a tenant under a rental agreement
2 who has paid a security deposit vacates the premises before the termination date of
3 the rental agreement, the landlord shall deliver or mail to the tenant the full amount
4 of the security deposit, less any amounts that may be withheld under s. 704.28,
5 within 21 days after the landlord has ^{re-rents} ~~rented~~ the premises vacated by the tenant.

6 SECTION 16. 704.44 (intro.) of the statutes is amended to read:

7 **704.44 Rental Provision in rental agreement that restricts access to**
8 **certain services is void.** (intro.) A provision in a rental agreement ~~is void and~~
9 ~~unenforceable if it~~ that allows a landlord in a residential tenancy to do any of the
10 following because a tenant has contacted an entity for law enforcement services,
11 health services, or safety services is void and unenforceable.

12 **SECTION 17. Nonstatutory provisions.**

13 (1) RENTAL INFORMATION DISCLOSURE COMMITTEE.

14 (a) There is created a rental information disclosure committee consisting of the
15 following members:

****NOTE: Here is where the committee members will be listed.

16 (b) Notwithstanding section 15.01 (3) of the statutes, the committee shall
17 review and approve or disapprove of items proposed by the department of
18 agriculture, trade and consumer protection to be included on the rental information
19 disclosure sheet under section 704.08 (1) of the statutes, as created by this act.

20 (c) The committee terminates upon promulgation of the rule under section
21 704.08 (2) of the statutes, as created by this act.

22 (2) RULES FOR INFORMATION DISCLOSURE SHEET.

23 (a) The department of agriculture, trade and consumer protection shall submit
24 in proposed form the rules required under section 704.08 (2) of the statutes, as

date on which the

Insert 7-5

1 created by this act, to the legislative council staff under section 227.15 (1) of the
2 statutes no later than the first day of the 7th month beginning after the effective date
3 of this paragraph.

4 (b) Notwithstanding section 227.137 (2) of the statutes, the department of
5 agriculture, trade and consumer protection is not required to prepare an economic
6 impact analysis for the rules required under section 704.08 (2) of the statutes, as
7 created by this act.

8 **SECTION 18. Initial applicability.**

9 (1) CREDIT REPORT FEES. The treatment of section 704.04 of the statutes first
10 applies to consumer credit reports that are requested on the effective date of this
11 subsection.

12 (2) INFORMATION ^(CS) ~~DISCLOSURE~~ CHECK-IN SHEET. The treatment of section 704.08 (1) of the
13 statutes first applies to tenants who enter into rental agreements on the effective
14 date of this subsection.

15 ~~§~~ DAMAGES FOR FAILURE TO VACATE. The treatment of section 704.27 of the
16 statutes first applies to actions for damages, including eviction actions, that are
17 commenced on the effective date of this subsection.

18 ~~§~~ RETURN OF SECURITY DEPOSITS.

19 (a) *Withholding amounts.* Except as provided in paragraph (c), the treatment
20 of section 704.28 of the statutes first applies to security deposits that are returned
21 on the effective date of this paragraph.

22 (b) *Timing for return.* Except as provided in paragraph (c), the treatment of
23 section 704.29 (5) of the statutes first applies to tenants vacating before the
24 termination date of a rental agreement who vacate the premises on the effective date
25 of this paragraph.

1 (c) *Inconsistent provision.* If a rental agreement contains a provision that is
2 inconsistent with the treatment of section 704.28 or 704.29 (5) of the statutes, the
3 treatment of section 704.28 or 704.29 (5) of the statutes, whichever is applicable, first
4 applies to that rental agreement with respect to withholding from, or the timing of
5 returning, a security deposit upon renewal.

6 ~~(5) VOID PROVISION THAT RESTRICTS ACCESS~~ AND SEVERABILITY OF PROVISIONS
7 ~~Notwithstanding section 704.02 of~~
8 the statutes, as created by this act, the treatment of ~~section~~ 704.44 (intro.) of the
9 statutes first applies to rental agreements that are entered into or renewed on the
10 effective date of this subsection.

11 **SECTION 19. Effective dates.** This act takes effect on the day after publication,
12 except as follows:

13 (1) INFORMATION DISCLOSURE SHEET. The treatment of section 704.08 (1) of the
14 statutes and SECTION 18 (2) of this act take effect on the first day of the 13th month
15 beginning after publication.

(END)

Sections 704.02 and

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3645/^{P2ins}~~P1ins~~
PJK:.....

INSERT 1-7

1 [✓]**SECTION 1.** 20.505 (7) (h) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:
3 20.505 (7) (h) *Funding for the homeless.* All moneys received from interest on
4 real estate trust accounts under s. 452.13 for grants under s. 16.307, ~~and all moneys~~
5 ~~received under s. 704.05 (5) (a) 2., and~~ for grants to agencies and shelter facilities for
6 homeless individuals and families under s. 16.308 (2) (a) and (b).

History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692, 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2zt), (2zu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2493, 2494, 2495, 9401, 9409; 2005 a. 60, 124, 141, 142, 253, 344, 414, 433; 2007 a. 20 ss. 323, 326, 516e to 542g, 9121 (6) (a); 2007 a. 226; 2009 a. 11, 28, 302, 318; 2011 a. 29, 32 ss. 406, 421m, 435m to 446m, 716m to 747c, 755, 759 to 766; s. 13.92 (2) (i).

(END OF INSERT 1-7)

INSERT 7-5

7 or the date on which the tenant's rental agreement terminates, whichever
8 occurs first

****NOTE: I assumed that you intended for the security deposit to be returned after
whichever event occurs first.

(END OF INSERT 7-5)

20.505 (7) (h) *Funding for the homeless*. All moneys received from interest on real estate trust accounts under s. 452.13 for grants under s. 16.307, ~~and all moneys received under s. 704.05 (5) (a) 2., for grants to agencies and shelter facilities for homeless individuals and families under s. 16.308 (2) (a) and (b).~~

****NOTE: Instead of removing funding entirely from this appropriation for grants under s. 16.308 (2) (a) and (b), you could also fund those grants from the first funding source for the appropriation (moneys received from interest on real estate trust accounts under s. 452.13). Let me know if you would like to do that.

SECTION 4. 321.62 (15) (a) of the statutes is amended to read:

321.62 (15) (a) Notwithstanding ~~ss. 704.05 (5) and s. 704.90~~, no person may enforce a lien for storage of any household goods, furniture, or personal effects of a service member during the period in which the service member is in state active duty and for 90 days after the member's completion of state active duty, except as permitted by a court order under par. (b).

SECTION 5. 704.05 (5) (title) of the statutes is amended to read:

704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY TENANT.

SECTION 6. 704.05 (5) (a) (intro.) of the statutes is renumbered 704.05 (5) (a) and amended to read:

704.05 (5) (a) ~~Procedure~~ At landlord's discretion. If a tenant removes from the premises and leaves personal property, the landlord may ~~do all of the following:~~ presume, in the absence of actual notice to the contrary, that the tenant has abandoned the personal property and may dispose of the abandoned personal property in any manner that the landlord, in its sole discretion, determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to disposition of the abandoned personal property.

SECTION 7. 704.05 (5) (a) 1. of the statutes is repealed.

a written agreement between the landlord and the tenant

1 SECTION 8. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act
2 32, is repealed.

3 SECTION 9. 704.05 (5) (a) 3. of the statutes is repealed.

4 SECTION 10. 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and
5 amended to read:

6 704.05 (5) (b) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
7 as provided by this subsection ~~apply~~ applies to any property left on the premises by
8 the tenant, whether owned by the tenant or by others. ~~That lien has priority over any~~
9 ~~ownership or security interest, and the~~ The power to dispose under this subsection
10 applies notwithstanding any rights of others existing under any claim of ownership
11 or security interest, but is subject to s. 321.62. The tenant or any secured party has
12 the right to redeem the property at any time before the landlord has disposed of it
13 or entered into a contract for its disposition by payment of ~~the landlord's charges~~
14 ~~under par. (a) for removal, storage, disposition and arranging for the sale~~ any
15 expenses that the landlord has incurred with respect to the disposition of the
16 property.

***NOTE: I retained but modified this paragraph to clarify the rights of a party with
a security interest in the tenant's personal property. Ok?

17 SECTION 11. 704.05 (5) (d) of the statutes is repealed.

18 SECTION 12. 704.11 of the statutes is amended to read:

19 **704.11 Lien of landlord.** Except as provided in ss. 704.05 (5), 704.90 and
20 779.43 or by express agreement of the parties, the landlord has no right to a lien on
21 the property of the tenant; the common-law right of a landlord to distrain for rent
22 is abolished.

23 SECTION 13. Initial applicability.

Insert 8-14

- 1 *fix component*
2 ~~(1)~~ This act first applies to property left behind by a tenant under a tenancy
3 commenced, or a lease entered into or renewed, on the effective date of this
4 subsection.

(END of ins. 8-14)

(CS)
→ DISPOSAL OF PROPERTY. The treatment of
sections 20.505(7)(h), 321.62(15)(a), 704.05(5)
sections (title), (a)(intro), 1., 2., and 3., (c), and (d), and 704.11
of the statutes

Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

Date

LRB-3645/2-00MMS

PJK&MES:med:jf

Representative Vos:

As I discussed with Janine Hale, I did not make the requested change on page one, line 8 of the /P1 version such that the line would read "A fee that is imposed by a political subdivision on **existing** residential dwelling units. . ." because it is unclear to me what is intended. Does "existing" refer to a dwelling unit that exists on the effective date of the bill, but not to units that may be built in the future? If not, it's unclear what is meant by adding the term "existing" here. ✓

If your intent is for created s. 66.0628 (4) to apply existing dwelling units as well as units that will be built in the future, you may not want to add "existing" here as it may be construed as limiting the statute only to units that exist right now. Obviously, the statute can't impose a fee on units that don't yet exist. My concern is that adding "existing" to page one, line 8 of the /P1 version is confusing and if the statute's applicability to new units is challenged some years after the bill takes effect, a court could rule that the statute does not apply to dwelling units built after the bill's effective date. ✓

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3645/P2dn
MES:med:jf

January 9, 2012

Representative Vos:

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Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Kahler, Pam

From: Hale, Janine
Sent: Tuesday, January 10, 2012 2:50 PM
To: Kahler, Pam
Subject: LRB 3645/P1dn - item #1

Pam,

I just spoke with Rep. Stroebel regarding your drafting note on LRB 3645/P1 relating to various landlord/tenant reforms. Item #1 on your note addressed the issue of relinquishment of eviction action and the clarification of eviction action before or after a lease expires. Rep. Stroebel plans to call you and discuss his intention with this piece of the legislation.

Since the draft request came under Rep. Vos' name, I wanted to convey that it is fine if you speak to Rep. Stroebel about the draft. He is part of a group of legislators with Rep. Vos that are working on this bill.

Please let me know if you have any questions.

Thank you,
Janine

Janine L. Hale

Office of State Representative Robin Vos
Co-Chair, Joint Committee on Finance
309 East, State Capitol
P.O. Box 8953
Madison, WI 53708
janine.hale@legis.wi.gov
608-266-9171
1-888-534-0063

Kahler, Pam

From: Hale, Janine
Sent: Friday, January 13, 2012 11:41 AM
To: Kahler, Pam
Subject: RE: LRB-3645

If you could re-run it as a third preliminary that would be great. Would it be possible to have it by noon next Tuesday?

Janine

Janine L. Hale

Office of State Representative Robin Vos
Co-Chair, Joint Committee on Finance
309 East, State Capitol
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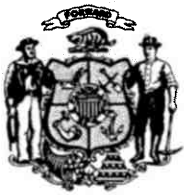
From: Kahler, Pam
Sent: Thursday, January 12, 2012 1:17 PM
To: Hale, Janine
Cc: Stroebel, Duey
Subject: LRB-3645

Hi, Janine:

I had a conversation with Rep. Stroebel about the issue related to dismissing eviction actions because the landlord has accepted rent from the tenant and have drafted something in the eviction statutes (ch. 799). I can incorporate it into the next version of the draft along with any other changes, or rerun the draft now with that single change. Which would you prefer?

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3645/P3

PJK&MES:med:j

stays in run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
Tues a.m., please
(1-17)

regenerate ↓

1 AN ACT *to repeal* 704.05 (5) (a) 1., 704.05 (5) (a) 2., 704.05 (5) (a) 3. and 704.05
2 (5) (d); *to renumber and amend* 704.05 (5) (a) (intro.) and 704.05 (5) (c); *to*
3 *amend* 20.505 (7) (h), 321.62 (15) (a), 704.03 (1), 704.05 (5) (title), 704.07 (1),
4 704.11, 704.27, 704.29 (title) and 704.44 (intro.); and *to create* 66.0628 (4),
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11 **66.1010 Moratorium on evictions. (1)** In this section, "political subdivision"
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15 a tenant of the landlord's residential or commercial property.

16 **(3)** If a political subdivision has in effect on the effective date of this subsection
17 [LRB inserts date], an ordinance that is inconsistent with sub. (2), the ordinance
18 does not apply and may not be enforced.

19 **SECTION 4.** 321.62 (15) (a) of the statutes is amended to read:

20 321.62 (15) (a) Notwithstanding ~~ss. 704.05 (5) and s. 704.90~~, no person may
21 enforce a lien for storage of any household goods, furniture, or personal effects of a
22 service member during the period in which the service member is in state active duty
23 and for 90 days after the member's completion of state active duty, except as
24 permitted by a court order under par. (b).

25 **SECTION 5.** 704.02 of the statutes is created to read:

1 **704.02 Severability of rental agreement provisions.** The provisions of a
2 rental agreement are severable. If any provision of a rental agreement is rendered
3 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
4 invalidity or unenforceability of that provision does not affect other provisions of the
5 rental agreement that can be given effect without the invalid provision.

6 **SECTION 6.** 704.03 (1) of the statutes is amended to read:

7 704.03 (1) ORIGINAL AGREEMENT. ~~A Notwithstanding s. 704.02, a~~ lease for more
8 than a year, or a contract to make such a lease, is not enforceable unless it meets the
9 requirements of s. 706.02 and in addition sets forth the amount of rent or other
10 consideration, the time of commencement and expiration of the lease, and a
11 reasonably definite description of the premises, or unless a writing signed by the
12 landlord and the tenant sets forth the amount of rent or other consideration, the
13 duration of the lease, and a reasonably definite description of the premises and the
14 commencement date is established by entry of the tenant into possession under the
15 writing. Sections 704.05 and 704.07 govern as to matters within the scope of such
16 sections and not provided for in such written lease or contract.

17 **SECTION 7.** 704.05 (5) (title) of the statutes is amended to read:

18 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
19 TENANT.

20 **SECTION 8.** 704.05 (5) (a) (intro.) of the statutes is renumbered 704.05 (5) (a)
21 and amended to read:

22 704.05 (5) (a) *Procedure At landlord's discretion.* If a tenant removes from the
23 premises and leaves personal property, the landlord may ~~do all of the following:~~
24 presume, in the absence of a written agreement between the landlord and the tenant
25 to the contrary, that the tenant has abandoned the personal property and may

1 dispose of the abandoned personal property in any manner that the landlord, in its
2 sole discretion, determines is appropriate. The tenant is responsible for any costs
3 that the landlord incurs with respect to disposition of the abandoned personal
4 property.

5 SECTION 9. 704.05 (5) (a) 1. of the statutes is repealed.

6 SECTION 10. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act
7 32, is repealed.

8 SECTION 11. 704.05 (5) (a) 3. of the statutes is repealed.

9 SECTION 12. 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and
10 amended to read:

11 704.05 (5) (b) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
12 as provided by this subsection ~~apply~~ applies to any property left on the premises by
13 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~
14 ~~any ownership or security interest, and the~~ The power to dispose under this
15 subsection applies notwithstanding any rights of others existing under any claim of
16 ownership or security interest, ~~but is subject to s. 321.62.~~ The tenant or any secured
17 party has the right to redeem the property at any time before the landlord has
18 disposed of it or entered into a contract for its disposition by payment of ~~the landlord's~~
19 ~~charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any
20 expenses that the landlord has incurred with respect to the disposition of the
21 property.

22 SECTION 13. 704.05 (5) (d) of the statutes is repealed.

23 SECTION 14. 704.07 (1) of the statutes is amended to read:

24 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential
25 tenancy if there is no contrary provision in writing signed by both parties and to all

1 residential tenancies. An agreement to waive the requirements of this section in a
2 residential tenancy, including an agreement in a rental agreement, is void. Nothing
3 in this section is intended to affect rights and duties arising under other provisions
4 of the statutes.

5 **SECTION 15.** 704.07 (2) (bm) of the statutes is created to read:

6 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before
7 entering into a rental agreement with or accepting any earnest money or security
8 deposit from the prospective tenant, any building code or housing code violation to
9 which all of the following apply:

10 1. The landlord has received notice of the violation from a local housing code
11 enforcement agency.

12 2. The violation affects the dwelling unit that is the subject of the prospective
13 rental agreement or a common area of the premises.

14 3. The violation has not been corrected.

15 4. The date by which the violation must be corrected has passed.

16 **SECTION 16.** 704.07 (3) (bm) of the statutes is created to read:

17 704.07 (3) (bm) If the premises is in need of any repair or other maintenance,
18 before reporting the problem to a building inspector, elected public official, or local
19 housing code enforcement agency, a tenant shall first notify the landlord in writing
20 and allow the landlord adequate time to investigate and rectify the problem.

21 **SECTION 17.** 704.08 of the statutes is created to read:

22 **704.08 Information check-in sheet.** A landlord shall provide to a
23 residential tenant when the tenant enters into a new rental agreement a
24 standardized information check-in sheet that contains an itemized description of
25 the condition of the premises at the time of check-in. The landlord is not required

1 to provide the information check-in sheet to a tenant upon renewal of a rental
2 agreement.

3 **SECTION 18.** 704.11 of the statutes is amended to read:

4 **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5)~~, 704.90 and
5 779.43 or by express agreement of the parties, the landlord has no right to a lien on
6 the property of the tenant; the common-law right of a landlord to distrain for rent
7 is abolished.

8 **SECTION 19.** 704.17 (2) (d) of the statutes is created to read:

9 704.17 (2) (d) This subsection does not apply to week-to-week or
10 month-to-month tenants.

11 **SECTION 20.** 704.27 of the statutes is amended to read:

12 **704.27 Damages for failure of tenant to vacate at end of lease or after**
13 **notice.** If a tenant remains in possession without consent of the tenant's landlord
14 after expiration of a lease or termination of a tenancy by notice given by either the
15 landlord or the tenant, or after termination by valid agreement of the parties, the
16 landlord ~~may~~ shall, at the landlord's discretion, recover from the tenant damages
17 suffered by the landlord because of the failure of the tenant to vacate within the time
18 required. In absence of proof of greater damages, the landlord ~~may~~ shall recover as
19 minimum damages twice the rental value apportioned on a daily basis for the time
20 the tenant remains in possession. As used in this section, rental value means the
21 amount for which the premises might reasonably have been rented, but not less than
22 the amount actually paid or payable by the tenant for the prior rental period, and
23 includes the money equivalent of any obligations undertaken by the tenant as part
24 of the rental agreement, such as payment of taxes, insurance and repairs.

25 **SECTION 21.** 704.28 of the statutes is created to read:

1 **704.28 Withholding from security deposits.** When a landlord returns a
2 security deposit to a tenant after the tenant vacates the premises, the landlord may
3 withhold from the full amount of the security deposit only amounts reasonably
4 necessary to pay for any of the following:

5 (1) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

6 (2) Past due bills for which the tenant is legally responsible and for the
7 nonpayment of which a lien may be placed on the rental property, including water
8 and sewer and electrical bills.

 ****NOTE: Would a landlord necessarily know what bills could result in a lien on the
property?

9 (3) Cleaning of the premises to return the premises to the same level of
10 cleanliness that existed at the beginning of the tenancy.

11 (4) If provided for in the rental agreement, replacement or repair of the
12 landlord's personal property, including keys and furniture, excluding normal wear
13 and tear.

 ****NOTE: It would be difficult to place a value on "normal wear and tear" for
purposes of subtracting it from the cost of, for example, a new couch. Or do you mean that
the tenant wouldn't be responsible for any of the cost of a new couch if a new one was
needed but the tenant only added normal wear and tear to the old one?

14 **SECTION 22.** 704.29 (title) of the statutes is amended to read:

15 **704.29 (title) Recovery of rent and damages by landlord; mitigation;**
16 **return of security deposit.**

17 **SECTION 23.** 704.29 (5) of the statutes is created to read:

18 **704.29 (5) RETURN OF SECURITY DEPOSIT.** If a tenant under a rental agreement
19 who has paid a security deposit vacates the premises before the termination date of
20 the rental agreement, the landlord shall deliver or mail to the tenant the full amount
21 of the security deposit, less any amounts that may be withheld under s. 704.28,

1 within 21 days after the date on which the landlord rerents the premises vacated by
2 the tenant or the date on which the tenant's rental agreement terminates, whichever
3 occurs first.

****NOTE: I assumed that you intended for the security deposit to be returned after
whichever event occurs first.

4 **SECTION 24.** 704.44 (intro.) of the statutes is amended to read:

5 **704.44 Rental Provision in rental agreement that restricts access to**
6 **certain services is void.** (intro.) A provision in a rental agreement is void and
7 unenforceable if it that allows a landlord in a residential tenancy to do any of the
8 following because a tenant has contacted an entity for law enforcement services,
9 health services, or safety services is void and unenforceable:

10 **SECTION 25. Initial applicability.**

11 (1) DISPOSAL OF PROPERTY. The treatment of sections 20.505 (7) (h), 321.62 (15)
12 (a), 704.05 (5) (title, (a) (intro.), 1., 2., and 3., (c), and (d), and 704.11 of the statutes
13 first applies to property left behind by a tenant under a tenancy commenced, or a
14 lease entered into or renewed, on the effective date of this subsection.

15 (2) DAMAGES FOR FAILURE TO VACATE. The treatment of section 704.27 of the
16 statutes first applies to actions for damages, including eviction actions, that are
17 commenced on the effective date of this subsection.

18 (3) RETURN OF SECURITY DEPOSITS.

19 (a) *Withholding amounts.* Except as provided in paragraph (c), the treatment
20 of section 704.28 of the statutes first applies to security deposits that are returned
21 on the effective date of this paragraph.

22 (b) *Timing for return.* Except as provided in paragraph (c), the treatment of
23 section 704.29 (5) of the statutes first applies to tenants vacating before the

Insert 8-9

1 termination date of a rental agreement who vacate the premises on the effective date
2 of this paragraph.

3 (c) *Inconsistent provision.* If a rental agreement contains a provision that is
4 inconsistent with the treatment of section 704.28 or 704.29 (5) of the statutes, the
5 treatment of section 704.28 or 704.29 (5) of the statutes, whichever is applicable, first
6 applies to that rental agreement with respect to withholding from, or the timing of
7 returning, a security deposit upon renewal.

8 (4) VOID PROVISION AND SEVERABILITY OF PROVISIONS. The treatment of sections
9 704.02 and 704.44 (intro.) of the statutes first applies to rental agreements that are
10 entered into or renewed on the effective date of this subsection.

11 (END)

D - note

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3645/P3ins
PJK:.....

INSERT 8-9

1 **SECTION 1.** 799.40 (1m) of the statutes is created to read:
2 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
3 section against a tenant whose tenancy has been terminated for failure to pay rent,
4 the action under this section may not be dismissed solely because the landlord
5 accepts past due rent from the tenant after the termination of the tenant's tenancy.

(END OF INSERT 8-9)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3645/P3dn

PJK:mes:.....

Date

med

This redraft adds proposed s. 799.40 (1m) to address the situation in which a court requires a landlord who has commenced an eviction action against a tenant for failure to pay rent to provide a five-day notice all over again to remove the tenant if the landlord accepts any rent from the tenant.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3645/P3dn
PJK:med:jm

January 13, 2012

This redraft adds proposed s. 799.40 (1m) to address the situation in which a court requires a landlord who has commenced an eviction action against a tenant for failure to pay rent to provide a five-day notice all over again to remove the tenant if the landlord accepts any rent from the tenant.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Janice Hale by phone 1-19-12
re. LRB-3645

- ✓1) Switch to Rep Stroebel
- ✓2) remove sections 1+2
- ✓3) Sect. 6 - make sure that "a writing" includes email and fax
- ✓4) Sect 8 - make sure it does not apply to self-storage rentals (sub. (5))
- ✓5) Sect 21 - use ATCP 134.06(3) instead
- ✓6) Sect 23 - change wording so that 24 days is from start of tenancy, not necessary when re-rented (agreement to rent)
- ✓7) any additional wording changes that I told her did not make sense? will get back to me

change in 704.27 that other damages are recoverable and make twice rent the damages out for holding over

Kahler, Pam

From: Shovers, Marc
Sent: Friday, January 20, 2012 11:48 AM
To: Kite, Robin; Kahler, Pam
Subject: RE: Mobile home parking fees

Robin's memory is correct. The phrase "monthly municipal permit fee" is what's used in s. 66.0435.

From: Kite, Robin
Sent: Friday, January 20, 2012 11:42 AM
To: Kahler, Pam; Shovers, Marc
Subject: RE: Mobile home parking fees

I'm pretty sure that the term should be "monthly municipal permit fee". That fee used to be called a "parking fee" but was changed a few sessions ago when I did a rewrite of the manufactured home laws.

Robin

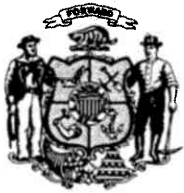
From: Kahler, Pam
Sent: Friday, January 20, 2012 11:32 AM
To: Shovers, Marc; Kite, Robin
Subject: Mobile home parking fees

Hi, Marc and Robin:

I'm not sure which of you is the best one to answer this so I'm sending to both of you. I have to incorporate some DATCP code language into the statutes for the purposes for which a landlord may withhold money from a security deposit. The phrase they use is "unpaid mobile home parking fees which a local unit of government has assessed against the tenant under s. 66.0435 (3)." Is "mobile home parking fees" the proper terminology to use? Thanks!

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3645/P

PJK&MES:med

stop r m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
(in 1-26)

D-Note

prohibiting

regenerate

1 AN ACT to repeal 704.05 (5) (a) 1., 704.05 (5) (a) 2., 704.05 (5) (a) 3. and 704.05
2 (5) (d); to renumber and amend 704.05 (5) (a) (intro.) and 704.05 (5) (c); to
3 amend 20.505 (7) (h), 321.62 (15) (a), 704.03 (1), 704.05 (5) (title), 704.07 (1),
4 704.11, 704.27, 704.29 (title) and 704.44 (intro.); and to create 66.0628 (4),
5 66.1010, 704.02, 704.07 (2) (bm), 704.07 (3) (bm), 704.08, 704.17 (2) (d), 704.28,
6 704.29 (5) and 799.40 (1m) of the statutes; relating to: miscellaneous
7 landlord-tenant provisions and the regulation of fees that a local government
8 may impose on residential dwelling units

eviction actions
on eviction

from imposing a moratorium

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.505 (7) (h) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

1 20.505 (7) (h) *Funding for the homeless*. All moneys received from interest on
2 real estate trust accounts under s. 452.13 for grants under s. 16.307, ~~and all moneys~~
3 ~~received under s. 704.05 (5) (a) 2., and~~ for grants to agencies and shelter facilities for
4 homeless individuals and families under s. 16.308 (2) (a) and (b).

5 **SECTION 2.** 66.0628 (4) of the statutes is created to read:

6 66.0628 (4) A fee that is imposed by a political subdivision on residential
7 dwelling units shall be uniform within the political subdivision without regard to
8 whether a particular dwelling unit is owner-occupied, a rental unit, a single-family
9 unit, or part of a multi-family unit.

10 **SECTION 3.** 66.1010 of the statutes is created to read:

11 **66.1010 Moratorium on evictions.** (1) In this section, "political subdivision"
12 has the meaning given in s. 66.1011 (1m) (e).

13 (2) A political subdivision may not enact or enforce an ordinance that imposes
14 a moratorium on a landlord from pursuing an eviction action under ch. 799 against
15 a tenant of the landlord's residential or commercial property.

16 (3) If a political subdivision has in effect on the effective date of this subsection
17 [LRB inserts date], an ordinance that is inconsistent with sub. (2), the ordinance
18 does not apply and may not be enforced.

19 **SECTION 4.** 321.62 (15) (a) of the statutes is amended to read:

20 321.62 (15) (a) Notwithstanding ~~ss. 704.05 (5) and s. 704.90~~, no person may
21 enforce a lien for storage of any household goods, furniture, or personal effects of a
22 service member during the period in which the service member is in state active duty
23 and for 90 days after the member's completion of state active duty, except as
24 permitted by a court order under par. (b).

25 **SECTION 5.** 704.02 of the statutes is created to read:

1 **704.02 Severability of rental agreement provisions.** The provisions of a
2 rental agreement are severable. If any provision of a rental agreement is rendered
3 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
4 invalidity or unenforceability of that provision does not affect other provisions of the
5 rental agreement that can be given effect without the invalid provision.

6 **SECTION 6.** 704.03 (1) of the statutes is amended to read:

7 704.03 (1) ORIGINAL AGREEMENT. ~~A Notwithstanding s. 704.02,~~ a lease for more
8 than a year, or a contract to make such a lease, is not enforceable unless it meets the
9 requirements of s. 706.02 and in addition sets forth the amount of rent or other
10 consideration, the time of commencement and expiration of the lease, and a
11 reasonably definite description of the premises, or unless a writing signed by the
12 landlord and the tenant sets forth the amount of rent or other consideration, the
13 duration of the lease, and a reasonably definite description of the premises and the
14 commencement date is established by entry of the tenant into possession under the
15 writing. Sections 704.05 and 704.07 govern as to matters within the scope of such
16 sections and not provided for in such written lease or contract.

17 **SECTION 7.** 704.05 (5) (title) of the statutes is amended to read:

18 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
19 TENANT.

20 **SECTION 8.** 704.05 (5) (a) (intro.) of the statutes is renumbered 704.05 (5) (a)
21 and amended to read:

22 704.05 (5) (a) ~~Procedure At landlord's discretion.~~ If a tenant removes from the
23 premises and leaves personal property, the landlord may do all of the following:
24 presume, in the absence of a written agreement between the landlord and the tenant
25 to the contrary, that the tenant has abandoned the personal property and may

including by means of electronic mail or facsimile transmission

Insert 4-7

1 dispose of the abandoned personal property in any manner that the landlord, in its
2 sole discretion, determines is appropriate. The tenant is responsible for any costs
3 that the landlord incurs with respect to disposition of the abandoned personal
4 property.

5 **SECTION 9.** 704.05 (5) (a) 1. of the statutes is repealed.

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7 32, is repealed.

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9 **SECTION 12.** 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and
10 amended to read:

11 704.05 (5) (b) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
12 as provided by this subsection ~~apply~~ applies to any property left on the premises by
13 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~
14 ~~any ownership or security interest, and the~~ The power to dispose under this
15 subsection applies notwithstanding any rights of others existing under any claim of
16 ownership or security interest, but is subject to s. 321.62. The tenant or any secured
17 party has the right to redeem the property at any time before the landlord has
18 disposed of it or entered into a contract for its disposition by payment of the landlord's
19 ~~charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any
20 expenses that the landlord has incurred with respect to the disposition of the
21 property.

Insert 4-21

22 **SECTION 13.** 704.05 (5) (d) of the statutes is repealed.

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9 which all of the following apply:

10 1. The landlord has received notice of the violation from a local housing code
11 enforcement agency.

12 2. The violation affects the dwelling unit that is the subject of the prospective
13 rental agreement or a common area of the premises.

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15 4. The date by which the violation must be corrected has passed.

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20 and allow the landlord adequate time to investigate and rectify the problem.

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25 the condition of the premises at the time of check-in. The landlord is not required

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2 agreement.

3 **SECTION 18.** 704.11 of the statutes is amended to read:

4 **704.11 Lien of landlord.** Except as provided in ss. 704.05 (5), 704.90 and
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7 is abolished.

8 **SECTION 19.** 704.17 (2) (d) of the statutes is created to read:

9 704.17 (2) (d) This subsection does not apply to week-to-week or
10 month-to-month tenants.

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12 **704.27 Damages for failure of tenant to vacate at end of lease or after**
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17 suffered by the landlord because of the failure of the tenant to vacate within the time
18 required. ~~In absence of proof of greater damages, the landlord may shall~~ recover as
19 ~~minimum~~ damages twice the rental value apportioned on a daily basis for the time
20 the tenant remains in possession. As used in this section, rental value means the
21 amount for which the premises might reasonably have been rented, but not less than
22 the amount actually paid or payable by the tenant for the prior rental period, and
23 includes the money equivalent of any obligations undertaken by the tenant as part
24 of the rental agreement, such as payment of taxes, insurance and repairs.

25 **SECTION 21.** 704.28 of the statutes is created to read:

Insert 6-24

Standard provisions

1 **704.28 Withholding from security deposits.** When a landlord returns a
2 security deposit to a tenant after the tenant vacates the premises, the landlord may
3 withhold from the full amount of the security deposit only amounts reasonably
4 necessary to pay for any of the following:

5 (1) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

6 (2) Past due bills for which the tenant is legally responsible and for the
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8 and sewer and electrical bills.

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20 the rental agreement, the landlord shall deliver or mail to the tenant the full amount
21 of the security deposit, less any amounts that may be withheld under s. 704.28,

Insert 7-13

1 within 21 days after the date on which the landlord rerents the premises vacated by
2 the tenant or the date on which the tenant's rental agreement terminates, whichever
3 occurs first. → insert 8-3

****NOTE: I assumed that you intended for the security deposit to be returned after
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9 health services, or safety services is void and unenforceable:

10 SECTION 25. 799.40 (1m) of the statutes is created to read:

11 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
12 section against a tenant whose tenancy has been terminated for failure to pay rent,
13 the action under this section may not be dismissed solely because the landlord
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15 SECTION 26. Initial applicability.

16 (1) DISPOSAL OF PROPERTY. The treatment of sections 20.505 (7) (h), 321.62 (15)
17 (a), 704.05 (5) (title), (a) ^{as per} (intro.), 1., 2., and 3., (c), and (d), and 704.11 of the statutes
18 first applies to property left behind by a tenant under a tenancy commenced, or a
19 lease entered into or renewed, on the effective date of this subsection.

20 (2) DAMAGES FOR FAILURE TO VACATE. The treatment of section 704.27 of the
21 statutes first applies to actions for damages, including eviction actions, that are
22 commenced on the effective date of this subsection.

23 (3) RETURN OF SECURITY DEPOSITS.

(a) *Withholding amounts.* Except as provided in paragraph (c), the treatment of section 704.28 of the statutes first applies to security deposits that are returned on the effective date of this paragraph.

~~4~~ ~~Timing for return.~~ Except as provided in paragraph (d), the treatment of section 704.29 (5) of the statutes first applies to tenants vacating before the termination date of a rental agreement who vacate the premises on the effective date of this paragraph.

~~8~~ ~~Inconsistent provision.~~ If a rental agreement contains a provision that is inconsistent with the treatment of section 704.28 or 704.29 (5) of the statutes, the treatment of section 704.28 or 704.29 (5) of the statutes, whichever is applicable, first applies to that rental agreement with respect to withholding from, or the timing of returning a security deposit upon renewal.

(4) VOID PROVISION AND SEVERABILITY OF PROVISIONS. The treatment of sections 704.02 and 704.44 (intro.) of the statutes first applies to rental agreements that are entered into or renewed on the effective date of this subsection.

(END)

-3645/1dn
PJK:med

Do you want to add a date requirement in proposed s. 704.07(3)(bm)?

email and fax to the

PJK



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3604/P1
PJK:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 704.05 (5) (a) 1., 704.05 (5) (a) 2., 704.05 (5) (a) 3. and 704.05
2 (5) (d); *to renumber and amend* 704.05 (5) (a) (intro.) and 704.05 (5) (c); and
3 *to amend* 16.308 (2) (a), 16.308 (2) (b) (intro.), 20.505 (7) (h), 321.62 (15) (a),
4 704.05 (5) (title) and 704.11 of the statutes; **relating to:** disposing of personal
5 property that a tenant leaves behind.

Analysis by the Legislative Reference Bureau

Current law provides that, if a tenant leaves behind personal property after moving out of the rental premises, the landlord may store the property without a lien and return it to the tenant; store the property with a lien for the cost of storage and give the tenant notice of the storage within ten days after the charges begin; or give the tenant notice that after 30 days the landlord intends to dispose of the property by sale or other appropriate means. If the landlord disposes of the property by sale, the landlord may deduct the costs of sale from the proceeds. The tenant has 60 days after the date of the sale to claim the remaining proceeds, and any proceeds not claimed by the tenant must be sent to the Department of Administration to be used for providing grants to agencies and shelter facilities for the homeless. Current law allows the tenant or any person with a security interest in the property to redeem the property before the landlord disposes of it or enters into a contract for its disposal by paying the landlord's costs for removal, storage, disposition, and arranging for the sale, of the property.

This bill eliminates the procedures under current law for disposing of personal property that a tenant leaves behind and provides that, in the absence of actual

to the contrary
a written agreement between
the landlord and tenant

Insert A-1

(704)

4 The

Ins A-1 could

notice to the contrary, the landlord may presume that the personal property has been abandoned and may dispose of it in any manner that the landlord determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to the property's disposal. As under current law, the tenant or a secured party, however, may redeem the property before the landlord disposes of the property, or enters into a contract for its disposal, by paying all charges that the landlord has incurred with respect to the disposal. *(end of ins A-1)*

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.308 (2) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 16.308 (2) (a) From the ~~appropriations~~ appropriation under s. 20.505 (7) (fm)
4 and (h), the department shall award grants to eligible applicants for the purpose of
5 supplementing the operating budgets of agencies and shelter facilities that have or
6 anticipate a need for additional funding because of the renovation or expansion of an
7 existing shelter facility, the development of an existing building into a shelter facility,
8 the expansion of shelter services for homeless persons, or an inability to obtain
9 adequate funding to continue the provision of an existing level of services.

10 **SECTION 2.** 16.308 (2) (b) (intro.) of the statutes, as affected by 2011 Wisconsin
11 Act 32, is amended to read:

12 16.308 (2) (b) (intro.) The department shall allocate funds from the
13 ~~appropriations~~ appropriation under s. 20.505 (7) (fm) and (h) for temporary shelter
14 for homeless individuals and families as follows:

15 **SECTION 3.** 20.505 (7) (h) of the statutes, as affected by 2011 Wisconsin Act 32,
16 is amended to read:

If the landlord sells the property, the landlord may send the proceeds minus any costs of sale and storage, to DOA for use in providing grants to homeless shelters.

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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²The
This bill also prohibits any city, village, town, or county (political subdivision)
from enacting an ordinance, or enforcing an existing ordinance, ^{that} which imposes a
moratorium on a landlord from pursuing an eviction action against a tenant of the
landlord's residential or commercial property.

→ (F E - J L)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3645/lins
PJK:.....

INSERT A

This bill makes a number of changes to current law relating to landlord-tenant relations, including the following:

1. *Insert A-1 (at end of other inserts)*

2. Currently, what a landlord may deduct from a tenant's security deposit when the tenant vacates the premises is specified, not in the statutes, but in the Wisconsin Administrative Code (Code). The bill incorporates the Code provisions into the statutes and thus provides that a landlord may deduct amounts from a security deposit for tenant damage to the premises, unpaid rent, unpaid utility services for which the tenant was responsible, any unpaid monthly municipal permit fees, and any other reason provided in a nonstandard rental provision to which the tenant has agreed. A landlord specifically may not deduct amounts from a security deposit for normal wear and tear. ✓

The bill also provides that, if a tenant removes from the premises before the end of his or her lease term, the landlord must return the tenant's security deposit within 21 days after the end of the lease term or, if the landlord rerents the premises before the end of that lease term, within 21 days after the new tenant's tenancy begins.

3. The bill requires a landlord to provide to a new tenant a standardized information check-in sheet with an itemized description of the condition of the premises at the time of the tenant's check-in. In addition, a landlord must disclose to a prospective tenant any uncorrected building code violation: 1) that affects the prospective tenant's dwelling unit or a common area of the premises; 2) for which the landlord has received notice from a local housing code enforcement agency; and 3) for which the date for correction is past due. ✓

4. The bill requires a tenant to notify the landlord in writing of any repair or maintenance that the premises requires before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency. ✓

5. Current law provides that a rental agreement is void and unenforceable if it allows a landlord to take various actions, such as increasing rent or refusing to renew a rental agreement, because the tenant has contacted an entity for law enforcement services, health services, or safety services. The bill changes this to provide that, rather than the entire rental agreement being void and unenforceable, any provision in a rental agreement that allows a landlord to take the specified actions is void and unenforceable. The bill also provides generally that provisions in rental agreements are severable and that the invalidity or unenforceability of any provision does not affect the other provisions that can be given effect without the invalid provision. ✓

6. Under current law, if a tenant does not remove from the premises after his or her lease has expired or his or her tenancy has been terminated, such as for nonpayment of rent, the landlord may recover damages from the tenant for the tenant's failure to vacate. The statute provides that the landlord may recover as minimum damages twice the rental value of the premises for the time that the tenant remained in possession if the landlord does not prove that he or she suffered greater damages. The bill provides that the landlord, at the landlord's discretion, shall

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Ins A cont'd

recover damages for the tenant's failure to vacate in the amount of twice the rental value of the premises for the time that the tenant remained in possession. The bill also clarifies that the landlord may seek and recover any other damages to which the landlord may be entitled. ✓

7. The bill provides that, if a landlord commences an eviction action against a tenant whose tenancy was terminated for nonpayment of rent and the landlord accepts past due rent from the tenant, the eviction action may not be dismissed solely because of the acceptance of the rent.

(END OF INSERT A)

INSERT 4-7

1 **SECTION 1.** 704.05 (5) (a) (title) of the statutes is repealed and recreated to read:

2 704.05 (5) (a) (title) *At the landlord's discretion.*

3 **SECTION 2.** 704.05 (5) (a) (intro.) and 1. of the statutes are consolidated,
4 renumbered 704.05 (5) (a) 1. and amended to read:

5 704.05 (5) (a) 1. If a tenant removes from the premises and leaves personal
6 property, the landlord may ~~do all of the following:~~ 1. ~~Store the personalty, on or off~~
7 ~~the premises, with a lien on the personalty for the actual and reasonable cost of~~
8 ~~removal and storage or, if stored by the landlord, for the actual and reasonable value~~
9 ~~of storage. The landlord shall give written notice of the storage to the tenant within~~
10 ~~10 days after the charges begin. The landlord shall give the notice either personally~~
11 ~~or by ordinary mail addressed to the tenant's last known address and shall state the~~
12 ~~daily charges for storage. The landlord may not include the cost of damages to the~~
13 ~~premises or past or future rent due in the amount demanded for satisfaction of the~~
14 ~~lien. The landlord may not include rent charged for the premises in calculating the~~
15 ~~cost of storage. Medicine and medical equipment are not subject to the lien under~~
16 ~~this subdivision, and presume, in the absence of a written agreement between the~~
17 ~~landlord shall promptly return them to and the tenant upon request to the contrary,~~
18 ~~that the tenant has abandoned the personal property and may dispose of the~~



Ins 4-7 contd

1 abandoned personal property in any manner that the landlord, in its sole discretion,
2 determines is appropriate. The tenant is responsible for any costs that the landlord
3 incurs with respect to disposition of the abandoned personal property.

History: 1993 a. 374, 486; 2001 a. 16; 2003 a. 33; 2005 a. 253; 2011 a. 32.

4 **SECTION 3.** 704.05 (5) (a) 2. of the statutes ^{as affected by 2011 Wisconsin Act 32} is amended to read:

5 704.05 (5) (a) 2. ~~Give the tenant notice, personally or by ordinary mail~~
6 ~~addressed to the tenant's last known address, of the landlord's intent to dispose of~~
7 ~~the personal property by sale or other appropriate means if the property is not~~
8 ~~repossessed by the tenant. If the tenant fails to repossess the property within 30 days~~
9 ~~after the date of personal service or the date of the mailing of the notice, If the~~
10 ~~landlord may dispose~~ disposes ~~of the property by private or public sale or any other~~
11 ~~appropriate means. The, the~~ landlord may deduct from send the proceeds of the sale
12 minus any costs of sale and any storage charges if the landlord has first stored the
13 personalty under subd. 1. ~~If the proceeds minus the costs of sale and minus any~~
14 ~~storage charges are not claimed within 60 days after the date of the sale of the~~
15 ~~personalty, the landlord is not accountable to the tenant for any of the proceeds of the~~
16 ~~sale or the value of the property. The landlord shall send the proceeds of the sale~~
17 ~~minus the costs of the sale and minus any storage charges to the department of~~
18 ~~administration for deposit in the appropriation under s. 20.505 (7) (h).~~

History: 1993 a. 374, 486; 2001 a. 16; 2003 a. 33; 2005 a. 253; 2011 a. 32.

(END OF INSERT 4-7)

INSERT 4-21

19 **SECTION 4.** 704.05 (5) (cm) of the statutes is created to read:

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Ins 4-21 contd

1 704.05 (5) (cm) *Inapplicability to self-storage facilities.* This subsection does
2 not apply to a lessee of a self-storage unit or space within a self-storage facility
3 under s. 704.90.

(END OF INSERT 4-21)

INSERT 6-24

4 **SECTION 5.** 704.27 of the statutes is amended to read:

5 **704.27 Damages for failure of tenant to vacate at end of lease or after**
6 **notice.** If a tenant remains in possession without consent of the tenant's landlord
7 after expiration of a lease or termination of a tenancy by notice given by either the
8 landlord or the tenant, or after termination by valid agreement of the parties, the
9 landlord ~~may shall, at the landlord's discretion,~~ recover from the tenant damages
10 suffered by the landlord because of the failure of the tenant to vacate within the time
11 required. ~~In absence of proof of greater damages, the landlord may recover as~~
12 ~~minimum damages in the amount of~~ twice the rental value apportioned on a daily
13 basis for the time the tenant remains in possession. As used in this section, rental
14 value means the amount for which the premises might reasonably have been rented,
15 but not less than the amount actually paid or payable by the tenant for the prior
16 rental period, and includes the money equivalent of any obligations undertaken by
17 the tenant as part of the rental agreement, such as payment of taxes, insurance and
18 repairs. Nothing in this section prevents a landlord from seeking and recovering any
19 other damages to which the landlord may be entitled.

History: 1993 a. 486.

(END OF INSERT 6-24)

INSERT 7-13

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Ins 7-13 1802

(a) Tenant damage, waste, or neglect of the premises.

(b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

(c) Payment that the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

(d) Payment that the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the tenant by a local unit of government under s. 66.0435 (3), to the extent that the landlord becomes liable for the tenant's nonpayment.

(f) Any other reason provided in a nonstandard rental provision document described in sub. (2). *→ payment for a*

(2) NONSTANDARD RENTAL PROVISIONS. Except as provided in sub. (3), a rental agreement may include one or more nonstandard rental provisions that authorize the landlord to withhold amounts from the tenant's security deposit for reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions shall be provided to the tenant in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify and discuss each nonstandard rental provision with the tenant before the tenant enters into a rental agreement with the landlord. If the tenant signs a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed the nonstandard rental provision with the tenant and that the tenant has agreed to it.

(3) NORMAL WEAR AND TEAR. This subsection does not authorize a landlord to withhold any amount from a security deposit for normal wear and tear, or for other

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Ins 7-13 contd 282

- 1 damages or losses for which the tenant cannot reasonably be held responsible under
2 applicable law.

(END OF INSERT 7-13)

INSERT 8-3

- 3 *not* or, if the landlord rerents the premises before the tenant's rental agreement
4 terminates, within 21 days after the new tenant's tenancy begins

(END OF INSERT 8-23)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3645/1dn
PJK:med:rs

January 30, 2012

Do you want to add e-mail and fax to the writing requirements in proposed s. 704.07
(3) (bm)?

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